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United States of America

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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
13 DEREK A. CAPOZZI,

No. EDCV 10-00239 AHM (DTB)

14 Plaintiff,

15 v. **DEFENDANT'S SECOND STATUS
REPORT**

16 UNITED STATES OF AMERICA,

17 Defendant.

18
19 Pursuant to this Court's Order, dated September 10, 2012,
20 Defendant, United States of America, files its Second Status
Report.

21
SUMMARY OF PROCEEDINGS TO DATE AND
STATEMENT OF ISSUES RAISED BY THE CASE

22 Pursuant to the Protective Order, approved by this Court on
23 August 30, 2012, Defendant has provided the Bureau of Prisons
24 ("BOP") Current Post Orders, Statistics from USP Victorville, the
25 Tort Claim File, and the SIS File, to Plaintiff's counsel
26 appointed by this Court to assist Plaintiff with discovery.

1 Defendant has informed Plaintiff's counsel that a copy of the
2 video surveillance tape will be produced to her as soon as BOP
3 agency counsel retrieves it from USP Victorville.

4 To date, Plaintiff is still on a writ to a Kentucky county
5 jail and therefore, Defendant is unable to depose him until he
6 returns to a BOP facility. Plaintiff's counsel indicated that
7 she does not know when Plaintiff will return to BOP custody.

8 As set forth in Defendant's prior Status Report, the sole
9 issue raised by this case is whether the United States is liable
10 because a BOP correctional officer allegedly failed to search an
11 inmate after he set off a metal detector. According to
12 Plaintiff, an inmate set off the metal detector as he walked
13 through it, but the correctional officer did not search him, and
14 this inmate later attacked Plaintiff on the yard with a knife
15 that he pulled from his waistband. Defendant denies all
16 allegations.

17 **STATEMENT AS TO WHETHER ALL PARTIES HAVE BEEN SERVED**

18 The only defendant, the United States, has been served.

19 **STATEMENT AS TO WHETHER PLEADINGS WILL BE AMENDED/PARTIES ADDED**

20 Plaintiff's counsel has not indicated if Plaintiff will seek
21 to amend the pleadings or add additional parties.

22 **DESCRIPTION OF DISCOVERY COMPLETED AND**

23 **SCHEDULE FOR FUTURE DISCOVERY**

24 As set forth above, all documents have been produced
25 pursuant to the Protective Order. As to future discovery,
26 Plaintiff's counsel has indicated that she may take depositions
27 of BOP employees at USP Victorville. Defendant plans to depose
28 Plaintiff once he returns to BOP custody.

1 **CONTEMPLATED MOTIONS**

2 Defendant anticipates filing a Motion for Summary Judgment
3 which could be dispositive of the entire case. Defendant is
4 unable to provide a proposed date for the Motion because the
5 undersigned cannot depose Plaintiff until he returns to BOP
6 custody. After the deposition, Defendant anticipates filing a
7 Motion for Summary Judgment within sixty to ninety days
8 thereafter.

9 **TRIAL ESTIMATE**

10 Pursuant to the Federal Tort Claims Act, Plaintiff is not
11 entitled to a jury trial. 28 U.S.C. § 2402. Defendant
12 anticipates that a court trial would take approximately three to
13 five court days.

14 **SETTLEMENT**

15 No settlement negotiations have taken place. Defendant
16 prefers to have a settlement conference with the Magistrate Judge
17 assigned to this case and if acceptable to the Court, Plaintiff
18 and his counsel can participate by video teleconference.

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21 DATED: October 17, 2012 Respectfully submitted,

22 ANDRÉ BIROTTÉ JR.
23 United States Attorney
24 LEON W. WEIDMAN
25 Assistant United States Attorney
26 Chief, Civil Division

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29 _____
30 /s/ *Erika Johnson-Brooks*
31 ERIKA JOHNSON-BROOKS
32 Assistant United States Attorney
33 Attorneys for Defendant